

1 UNITED STATES BANKRUPTCY COURT  
2 EASTERN DISTRICT OF CALIFORNIA  
3

4 In re: )  
5 HUE KIEN DANG, ) Case No. 20-24166-C-7  
6 Debtor. )  
7 \_\_\_\_\_ )  
8 SUSAN K. SMITH, ) Adversary No. 21-02001-C  
9 Plaintiff, )  
10 v. )  
11 BICHKHOA THI NGUYEN and BICHKHOA )  
12 THI NGUYEN, TRUSTEE OF THE )  
13 BICHKOA NGUYEN 2017 TRUST, )  
14 Defendants. )  
15 \_\_\_\_\_ )

16 **MEMORANDUM DECISION ON MOTION FOR ENTRY OF DEFAULT JUDGMENT**

17 The default of Defendants Bichkhoea Thi Nguyen and Bichkhoea  
18 Thi Nguyen, Trustee of Bichkhoea Nguyen 2017 Trust, have been  
19 entered pursuant to Federal Rule of Civil Procedure 55, as  
20 incorporated by Federal Rule of Bankruptcy Procedure 7055.

21 This court has carefully reviewed the record. The well-  
22 pleaded facts in the Amended Complaint are accepted as true. The  
23 relevant motion papers include the Motion for Default Judgment,  
24 Declaration, and Exhibits in support thereof (Docket ## 44-47),  
25 together with the Supplemental Declaration and Exhibits (Docket  
26 ## 62-63).

27 Chapter 7 Debtor Hue Kien Dang filed his chapter 7 case  
28 No. 20-24166 on August 29, 2020. Plaintiff Susan Smith is the  
duly appointed chapter 7 trustee.

1 In his Petition, Debtor gives his address as 8700 Spring  
2 House Way, Elk Grove, California ("8700 Spring House Way").

3 The Default Judgment record establishes that Debtor  
4 transferred, on November 14, 2016, real property commonly known  
5 as 8700 Spring House Way, to Defendant Bichkhoa Thi Nguyen for no  
6 consideration. At that time, Bank of America and U.S. Bank were  
7 creditors of Debtor.

8 Defendant Nguyen resides with Debtor at 8700 Spring House  
9 Way and is the mother of his children.

10 The record further establishes that Defendant Nguyen on  
11 May 2, 2017, transferred her interest in 8700 Spring House Way to  
12 herself as trustee of the Bichkhoa Nguyen 2017 Trust for no  
13 consideration.

14 The Default Judgment record further establishes that Debtor  
15 transferred \$44,500.00 to Defendant Bichkhoa Thi Nguyen on or  
16 about June 12, 2020, as a gift for no consideration.

17 The record further establishes that Nguyen deposited  
18 \$49,774.38 with First American Title Company on January 21, 2021,  
19 in connection with a mortgage loan transaction with respect to  
20 8700 Spring House Way.

21 This court is mindful that Debtor's counsel in the parent  
22 chapter 7 case, Steele Lanphier, has represented to the court  
23 that Mr. Dang and Ms. Nguyen are actually married and has told  
24 the court that he would correct the petition and related filings  
25 accordingly. Despite having had months to make good on that  
26 representation, no amendments have been made. The Petition and  
27 Schedules continue to state that Mr. Dang is not married, aver  
28 that he has no interest in real estate, and that he has no co-

1 debtors. Nor in Schedule I and in the Statement of Current  
2 Monthly Income does Mr. Dang disclose, as required, income of  
3 Ms. Nguyen as non-filing spouse. It is further noted that Steele  
4 Lanphier was also counsel to Bichkhoa Thi Nguyen in chapter 7  
5 case No. 10-21447 in this judicial district, in which there is no  
6 mention to the existence of Mr. Dang. Nothing having been done by  
7 Steele Lanphier to correct the bankruptcy case record with  
8 appropriate amendments, there is no reason to defer ruling on the  
9 question of default judgment.

10  
11 I

12 The Amended Complaint seeks to avoid the November 14, 2016,  
13 transfer of <sup>8700</sup> Spring House Way pursuant to California Civil  
14 Code § 3439.04(a)(1), as incorporated under the trustee's "strong  
15 arm" powers under 11 U.S.C. § 544, on the theory that the  
16 transfer was made with actual intent to hinder, or delay, or  
17 defraud a creditor.

18 Proof of the requisite "actual intent" under Civil Code  
19 § 3439.04(a)(1) must, pursuant to § 3439.04(c), be by  
20 preponderance of evidence, with reference to factors set forth at  
21 § 3439.04(b). Any of the factors may be dispositive as  
22 § 3439.04(b) does not create a counting or numerosity exercise.  
23 Moreover, there need not be proof of actual intent to defraud;  
24 rather, proof of actual intent to hinder or to delay creditors  
25 suffices for purposes of § 3439.04(a)(1).

26 Three of the Civil Code § 3439.04(b) factors pertain  
27 directly to the uncontroverted default judgment evidence in this  
28 case: (1) the transfer of 8700 Spring House Way was to the

1 insider mother of the transferor's children, § 3439.04(b)(1); (2)  
2 the debtor transferor retained possession or control of the  
3 property, where he continues to reside with the transferee as a  
4 family unit, § 3439.04(b)(2); and (3) the value of the  
5 consideration received (none) was not reasonably equivalent to  
6 the value of the property transferred, § 3439.04(b)(8). This  
7 constellation of factors warrants the conclusion that Plaintiff  
8 has carried the burden of presenting a preponderance of evidence  
9 for purposes of § 3439.04(c).

10 Accordingly, default judgment will be entered avoiding the  
11 transfer by Hue Kien Dang to Bichkhua Thi Nguyen of real property  
12 commonly known as 8700 Spring House Way, Elk Grove, California on  
13 November 14, 2016, pursuant to Civil Code § 3439.04(a)(1), as  
14 incorporated by 11 U.S.C. § 544.

15  
16 II

17 The Amended Complaint also seeks to avoid the transfer by  
18 Hue Kien Dang of \$44,500.00 to Bichkhua Thi Nguyen on or about  
19 June 12, 2020, under 11 U.S.C. § 548(a).

20 Debtor has stated under penalty of perjury in his Amended  
21 Statement of Financial Affairs that in June 2020, two months  
22 before filing his chapter 7 case, he made a gift of \$44,500.00 to  
23 Bichkhua Nguyen, the mother of his children, the source of which  
24 was a loan from a so-called § 401(k) account. Amended Statement  
25 of Financial Affairs, #13.

26 The \$44,500.00 gift was for no consideration using funds  
27 borrowed from a § 401(k) account. Debtor's Schedules reflect that  
28 his financial situation at that time, which was two months before

1 filing his chapter 7 case, was such that the sum of his debts was  
2 then greater than all of his property at fair valuation exclusive  
3 of the \$44,500.00 transferred within the meaning of 11 U.S.C.  
4 § 101(32)(A). Hence, the transfer will be avoided under § 548(a).

5 Although the record supports the conclusion that the gift  
6 was in the amount of \$44,500.00, the Amended Complaint asserts  
7 and demands only \$44,000.00. A default judgment must not exceed  
8 in amount what is demanded in the pleadings. Fed. R. Civ. P.  
9 54(c), as incorporated by Fed. R. Bankr. P. 7054(a). Since the  
10 Amended Complaint seeks only \$44,000.00, that sum is the upper  
11 limit on a default judgment.

12 Accordingly, default judgment will be entered avoiding the  
13 transfer in the amount of \$44,000.00.

14  
15 III


16 The Amended Complaint also seeks to recover the property  
17 transferred pursuant to 11 U.S.C. § 550.

18 As to 8700 Spring House Way the default judgment will avoid  
19 the transfer for the benefit of the estate pursuant to 11 U.S.C.  
20 § 550(a) and declare that the Plaintiff-Trustee's rights are  
21 superior to the immediate transferee, Defendant Bichkhoa Thi  
22 Nguyen, and to the mediate transferee, Defendant Bichkhoa Thi  
23 Nguyen as trustee of the Bichkhoa Nguyen 2017 Trust.

24 As to the \$44,000.00 gift, the default judgment will declare  
25 that Plaintiff-Trustee is, pursuant to 11 U.S.C. § 550(a),  
26 entitled to the value of the \$44,000.00 gift to be paid by the  
27 immediate transferee, Bichkhoa Thi Nguyen.

1       The Motion for Entry of Default Judgment is GRANTED. An  
2 appropriate default judgment shall be entered as a separate  
3 document.

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5       Dated: November 12, 2021

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United States Bankruptcy Judge

**INSTRUCTIONS TO CLERK OF COURT  
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

J. Russell Cunningham  
1830 15th St  
Sacramento, CA 95811

Susan Smith  
2701 Del Paso Road, Suite 130-PMB 399  
Sacramento, CA 95835

Bichkhoa Thi Nguyen  
8700 Spring House Way  
Elk Grove, CA 95624-1231

Steele Lanphier  
1860 Howe Ave., Suite 330  
Sacramento, CA 95825

Hue Kien Dang  
8700 Spring House Way  
Elk Grove, CA 95624-1231